

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:20-CV-00504-FDW-DSC

CPI SECURITY SYSTEMS, INC.

Plaintiff,

v.

VIVINT SMART HOME, INC.
f/k/a MOSAIC ACQUISITION CORP.;
LEGACY VIVINT SMART HOME, INC.
f/k/a VIVINT SMART HOME, INC.

Defendants.

**DEFENDANTS' MOTION
TO DISMISS THE COMPLAINT**

Defendants Vivint Smart Home, Inc. f/k/a Mosaic Acquisition Corp. and Legacy Vivint Smart Home, Inc. f/k/a Vivint Smart Home, Inc. (together, "Vivint") respectfully move to dismiss Plaintiff CPI Security Systems, Inc.'s complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Vivint seeks dismissal of CPI's claims on the following grounds:

- (1) CPI's Lanham Act claim (Count 1) fails to distinguish between a false association and false advertising theory, and it also fails to allege the elements of a false advertising claim.
- (2) CPI's common law unfair competition claim (Count 2) fails for the same reasons that its Lanham Act claim fails, because the analysis of these two claims is essentially the same.

- (3) CPI's claim under North Carolina's Unfair and Deceptive Trade Practices Act (Count 3) fails because the complaint does not sufficiently allege proximate cause or actual injury.
- (4) CPI's claim for trade slander/commercial disparagement (Count 4) fails to allege the time or location of the alleged slander, and it also fails to sufficiently allege special damages.
- (5) CPI's claim for tortious interference with business relationships (Count 5) fails because Vivint is a business competitor, and because CPI cannot sufficiently allege actual damages to support this claim.

Vivint is contemporaneously submitting a memorandum in support of this motion pursuant to Local Rule 7.1(c) and section 3(b)(iii) of the Court's Initial Scheduling Order.

Respectfully submitted the 28th day of October, 2020.

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CERTIFICATE OF SERVICE

I certify that I have electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of filing to all counsel and parties of record.

This the 28th day of October, 2020.

s/ Andrew H. Erteschik

Andrew H. Erteschik